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10 OXNARD POLICE DEPARTMENT, JOHN CROMBACH,
11 and ANDREW SALINAS

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 MARIA LAZOS, et al.,) No. CV 08-02987 RGK (SHx)
15)
16 Plaintiffs,) [consolidated w/
17) No. CV 08-05153 RGK (SH)]
18 v.)
19) **DEFENDANTS' OPPOSITION TO**
20 CITY OF OXNARD, et al.,) **PLAINTIFFS' MOTION IN**
21) **LIMINE NO. 10; DECLARATION**
22 Defendants.) **OF DEFENSE COUNSEL**
23)
24) Date : August 11, 2009
25) Time : 9:00 a.m.
26 AND CONSOLIDATED ACTION.) Ctrm : 850 Roybal
27)
28)

29 Defendants hereby oppose plaintiffs' Motion in Limine No. 10
30 regarding exclusion of evidence of decedent's prior possession of
31 a knife.

32 **I.**

33 **PLAINTIFFS FAILED TO TIMELY MEET AND CONFER AS**
34 **REQUIRED BY LOCAL RULE 7-3**

35 Plaintiffs failed to timely meet and confer. Pursuant to
36 Local Rule 7-3, counsel contemplating the filing of any motion
37 shall first contact opposing counsel to discuss thoroughly the
38 substance of the contemplated motion at least twenty (20) days

1 prior to the filing of the motion. Pursuant to the Court's
2 standing orders, motions in limine are to be filed and served a
3 minimum of forty-five (45) days prior to the scheduled trial date
4 of August 11, 2009, which is June 27, 2009. Since June 27 is a
5 Saturday, the motion is to be filed by June 26. Based upon a
6 June 26 filing date, any meet and confer effort would have to be
7 completed by June 6, 2009 (twenty days prior). Plaintiffs did not
8 attempt to meet and confer by identifying the anticipated motions
9 in limine until June 11, 2009 (Exhibit A). The Court should note
10 that plaintiffs' motion fails to include the requisite language of
11 L.R. 7-3, advising the Court of the date of the meet and confer,
12 obviously because it was untimely. As such, because the motion is
13 untimely, it should not be considered by the Court.

14 **II.**

15 **EVIDENCE PERTAINING TO DECEDENT'S PRIOR**
16 **POSSESSIONS OF A KNIFE ARE HIGHLY RELEVANT AND**
17 **ADMISSIBLE**

18 "[E]xtrinsic offense evidence, though inadmissible to show an
19 individual's (evil) proclivities, may properly be used at trial if
20 it has some special relevance in establishing a disputed material
21 issue." *United States v. Hadfield*, 918 F.2d 987, 994 (1st Cir.
22 1990), citing *United States v. Ingraham*, 832 F.2d 229, 231 (1st
23 Cir. 1987), *cert. denied*, 486 U.S. 1009 (1988).

24 Proof of uncharged crimes or bad acts "is
25 not admissible to prove the character of a
26 person in order to show action in conformity
27 therewith." Fed.R.Evid. 404(b). Nevertheless,
28 such other-crime evidence is admissible for any

1 other relevant purpose, "such as proof of
2 motive, opportunity, intent, preparation, plan,
3 knowledge, identity, or absence of mistake or
4 accident," *id.*, provided that the probative
5 value of this relevant purpose is not substan-
6 tially outweighed by any unfair prejudice, see
7 Fed.R.Evid. 403; see also *Huddleston v. United*
8 *States*, 485 U.S. 681, 691-92, . . . (1988).
9 Mindful of these principles, this court has
10 long adopted an "inclusionary" approach to the
11 admission of uncharged crime evidence, under
12 which evidence of prior crimes, wrongs, or acts
13 "is admissible for any purpose other than to
14 show a defendant's criminal propensity." *United*
15 *States v. Pitre*, 960 F.2d 1112, 1118-19 (2d
16 Cir. 1992) (internal quotation marks and cita-
17 tion omitted); see also *United States v.*
18 *Edwards*, 342 F.3d at 176; *United States v.*
19 *Tubol*, 191 F.3d 88, 95 (2d Cir. 1999). Further,
20 we accord considerable deference to a district
21 court's decision to admit such evidence, and we
22 will reverse only for abuse of discretion. See
23 *United States v. Pitre*, 960 F.2d at 1119
24 (observing that abuse of discretion requires
25 that "the district court acted arbitrarily
26 and irrationally"); *United States v. Tubol*,
27 191 F.3d at 95.
28 *United States v. Paulino*, 445 F.3d 211, 221 (2d Cir. 2006).

1 Evidence pertaining to the decedent's prior possession of
2 knives is highly relevant and admissible. Plaintiffs' theory of
3 this case, as the defense understands it, is that decedent was not
4 in the pickup truck allegedly burglarized, that the knife and
5 chisel located in the pickup truck with decedent's DNA on them were
6 planted, that decedent did not possess a knife at the time of the
7 shooting, and that the knife found at the scene of the shooting
8 with decedent's DNA on it was likewise planted. Plaintiff Maria
9 Lazos denied that her son carried a knife. Decedent's history of
10 possessing knives has "a special relevance in establishing a
11 disputed material issue." *United States v. Hadfield, supra*, at
12 231. As such, the evidence is admissible.

13 The evidence, although harmful to plaintiffs' case, is not
14 unfairly prejudicial. The probative value of the evidence far
15 exceeds any prejudicial effect on plaintiffs' case. To omit the
16 evidence would be highly prejudicial to the defense.

17
18 Dated: July ____, 2009

19 LAW OFFICES OF ALAN E. WISOTSKY

20
21 By: _____
22 DIRK DeGENNA
23 Attorneys for Defendants,
24 CITY OF OXNARD, OXNARD POLICE
25 DEPARTMENT, JOHN CROMBACH, and
26 ANDREW SALINAS
27
28

DECLARATION OF DIRK DEGENNA

I, Dirk DeGenna, declare as follows:

1. I am an attorney admitted to practice law before all the courts of the State of California and the United States District Court, Central District of California, and am an associate in the Law Offices of Alan E. Wisotsky, attorneys of record for defendants in this action. I make this declaration of my own personal knowledge, except as to the information declared on information and belief, and if called upon to testify, I could and would do so competently.

2. Plaintiffs' counsel did not make an effort to meet and confer regarding potential motions in limine until June 11, 2009, when by way of correspondence dated that same day, plaintiffs' counsel identified 23 anticipated motions in limine.

3. Attached hereto as Exhibit A is a true and correct copy of the June 11, 2009, correspondence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July ____, 2009, at Oxnard, California.

DIRK DEGENNA